

Attorney Docket No. 10139/04702 (00530-05PUS1)

**REMARKS**

Claims 8, 22, 43 and 48-50 have been cancelled. Claims 1 and 23 have been amended. Claims 25 - 39 and 44 - 46 have been allowed. Thus, claims 1 - 7, 9 - 21, 23 - 42, 44 - 47 and 51 remain pending in the present application. No new matter has been added. In view of the above amendments and the following remarks, it is respectfully submitted that all of the presently pending claims are in condition for allowance.

Claims 1 - 4, 6, 7, 9 - 21, 24, 40 - 42, 47 and 51 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Wack (U.S. Pub. No. 2002/0156474) in view of Kondo (U.S. Patent No. 3,779, 240). (See 9/24/07 Office Action, pp. 2-3).

Claim 1 has been amended to recite a bone plate for fixation of proximal humerus fractures "wherein at least one of an upper surface and a lower surface of the bone plate is divided substantially in half by the common longitudinal axis, and wherein at least a first pair of the first holes is symmetrically disposed about the longitudinal axis, and at least a second pair of the first holes is asymmetrically disposed about the longitudinal axis."

It is respectfully submitted that neither Wack nor Kondo, either alone or in combination, teach or suggest the aforementioned limitations of claim 1. Specifically, it is noted that claim 1 has been amended to incorporate the subject matter of claim 22, which the Examiner has indicated as allowable if rewritten in independent form incorporating all of the limitations of the base claim and any intervening claims. It is respectfully submitted that claim 1 is therefore allowable. Because claims 2 - 7, 9 - 21, 23 and 24 depend from and, therefore, include all of the limitations of claim 1, it is submitted that these claims are allowable.

Claim 5 stands rejected under 35 U.S.C. § 103(a) as unpatentable over Wack in view of Kondo, in further view of Schafer (U.S. Patent No. 6,572,622). (See 9/24/07 Office Action, p. 4).

Claim 5 depends from and, therefore, includes all of the limitations of claim 1. It is respectfully submitted that neither Wack nor Kondo nor Schafer, either alone or in any combination, teach or suggest the aforementioned limitations of claim 1. It is therefore

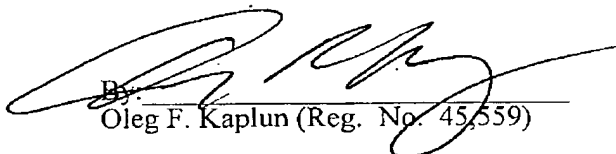
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respectfully submitted that claim 5 is allowable as being dependent on an allowable base claim.

It is therefore respectfully submitted that all of the presently pending claims are in condition for allowance. All issues raised by the Examiner having been addressed, an early and favorable action on the merits is earnestly solicited.

Respectfully submitted,

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